

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAMARIO JOSEPH BARDO,
Petitioner,

v.

KEN CLARK, Warden,
Respondent.

Case No. 19-00759 BLF (PR)

**ORDER DENYING MOTION FOR
LEAVE TO FILE AMENDED
PETITION WITHOUT PREJUDICE;
DIRECTING PETITIONER TO
FILE RENEWED MOTION AND
PROPOSED AMENDED PETITION**

(Docket No. 40)

Petitioner, a California state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 with the assistance of counsel. On October 28, 2019, the Court granted Petitioner's motion to dismiss counsel of record and reopened the matter to permit Petitioner an opportunity to file an opposition to Respondent's motion to dismiss the petition for failure to exhaust state court remedies. Dkt. Nos. 20, 23. Because of the delay in Petitioner obtaining his trial records from former counsel, the Court stayed briefing. Dkt. No. 37. On August 17, 2020, Petitioner filed notice that he received the files from former counsel. Dkt. No. 42.

Petitioner filed a motion for leave to file an amended petition on June 26, 2020. *Id.*, Dkt. No. 40. Because Petitioner did not serve the motion on Respondent, the Court noticed Respondent with the motion and directed them to file an opposition. Dkt. No. 43.

Respondent filed a response on September 15, 2020, stating that they are unable to assess whether there are any procedural obstacles to filing an amended petition since Petitioner failed to include an amended petition for filing or state what claim or claims he would include in an amended petition. Dkt. No. 44. In his motion, Petitioner asserts that his retained counsel was ineffective for failing to raise all issues on appeal. Dkt. No. 40 at 2-3. The Court agrees that more information is needed to determine whether this claim is cognizable and has been properly exhausted before it can be raised in a federal habeas petition.


For the foregoing reasons, Petitioner's motion for leave to amend is **DENIED** without prejudice. Dkt. No. 40. Petitioner shall be granted an opportunity to file a renewed motion for leave to amend along with a proposed amended petition on the court form, containing all the claims he wishes to pursue in this action. Petitioner must provide all the information required on the court form. The motion and proposed amended petition shall be filed **no later than twenty-eight (28) days from the date this order is filed**. Petitioner must serve a copy of the papers on Respondent.

The Clerk shall include two copies of the court's form petition with a copy of this order to Petitioner.

This order terminates Docket No. 40.

IT IS SO ORDERED.

Dated: September 23, 2020


BETH LABSON FREEMAN
United States District Judge